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CERE-C (405-90)

13 June 1996

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance for Leasing BRAC Properties

1. Enclosed is an ROA package with instructions, lessons learned, and draft examples of documents for the leasing of BRAC properties to fulfill the Deputy Assistant Secretary of the Army for Installations and Housing's (DASAI&H)) January 1996 directive.
2. This new ROA should be used for all BRAC leasing action.
3. Point of contact for this action is Mr. Todd Waldman, (202) 761-7035.

FOR THE DIRECTOR:

Encls

GARY B. PATERSON
Chief, Base Realignment and
Closure Office
Directorate of Real Estate

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SUBJECT: Guidance for Leasing BRAC Properties

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INSTRUCTIONS FOR PREPARING A REPORT OF AVAILABILITY (ROA)

These instructions are to be used to carry out the policy issued by the Deputy Assistant Secretary of the Army for Installations and Housing (DASA (I&H)) memorandum, 16 Jan 96, subject: Leasing of BRAC Properties.

Except for Section A, the ROA is a checklist. Sections B and C are designed to incorporate all data necessary to complete a lease on the subject property and show the issues which were considered throughout the chain of command. The ROA format is set up so that different sections can be prepared and staffed separately and signed by different Army elements, if required.

Section A is the Determination of Availability and is signed after Sections B and C have been completed, reviewed, and approved. Until further notice, the Determination of Availability will be executed by the DASA (I&H).

Section B is the general and operational information for making property available.

Section C contains environmental considerations.

The MACOM is responsible for the completion, accuracy, and approval of Sections B and C prior to forwarding to HQDA for final review and approval.

MACOM signatory for Sections B and C is to be the MACOM Commander or someone authorized to sign for the MACOM Commander.

The ROA package is to be forwarded to HQDA via a cover memo which states that staffing within required MACOM offices (BRAC, environmental, legal, and real estate) has been completed and is to include attachments necessary to support the ROA, including but not limited to maps and the Finding of Suitability to Lease (FOSL)*. National Environmental Policy Act (NEPA) documentation ** and Environmental Baseline Surveys are not required to be attached to the ROA as long as they have been previously provided to HQDA in sufficient copies. When responding to an item for which the answer is contained in a document previously submitted to HQDA (in sufficient copies), clearly identify where the answer is located (i.e., document title, date, page, paragraph, etc.).

* The FOSL differs from the ROA in that while the ROA is a

checklist used to negotiate the lease, the FOSL is the Army's declaration that the property is suitable to inhabit for a specific purpose. The FOSL is a document agreed upon by the Department of Defense and the U.S. Environmental Protection Agency.

** If Categorical Exclusion A-21 is used and the Record of Consideration is based on the active installation's master plan NEPA analysis, then appropriate extracts from the same are to be attached to the ROA.

SECTION A

DETERMINATION OF AVAILABILITY

Based upon the attached Report of Availability (ROA), which the MACOM has reviewed for accuracy and completeness and approved, I find that the proposed leasing action described in the ROA is in the public interest and is consistent with applicable laws and regulations.

I determine that the property is available for the proposed use and hereby authorize negotiation and execution of a lease in accordance with the attached ROA and applicable laws, regulations, and policy guidance.

**** INSERT ANY ADDITIONAL INSTRUCTIONS PERTAINING TO THE NEGOTIATION AND EXECUTION OF THE LEASE.

Date

Paul W. Johnson
Deputy Assistant Secretary of the Army
(Installations and Housing)
OASA(I,L&E)

SECTION B - REPORT OF AVAILABILITY GENERAL AND OPERATIONAL INFORMATION

(Installation:)

Terms used herein may be found in AR 405-1-12, The Real Estate Handbook, Chapter 8 (Management), dated Jan 95.

I. LEASE ADMINISTRATION:

1. Name, address and telephone number of Applicant or

requestor's representative(s), if any:

2. Proposed use:
3. Start date, if applicable:
4. Recommended term of outgrant:
 years; or
 months.

II. PROPERTY INFORMATION:

1. General property identification. Refer to the map(s) attached to the Finding of Suitability to Lease (FOSL) showing the nearest project or installation boundary; acreage; character of land; and the number and type of improvements, if both land and improvements are included. If only building space is involved, give total square feet and describe the type of construction. Use existing maps. Identify the location of the property to be leased on the attached maps (map coordinates, etc.):

Tract No.(s) and name, if any:

Segment maps, Master Plan designations:

Other (describe):

2. Acreage:
3. General character of the property (short description of the uses of the property; i.e., industrial, residential, warehouse, etc.):
4. Are Government buildings and improvements included in the area?
 ☐ No
 ☐ Yes. If yes, identify and describe all buildings, facilities and improvements, e.g. Identification Nos., square footage outgranted/percentage of building, and condition:
5. Existing or preceding property use (Provide a description below for each building, facility, area, etc., in either list or table format):
6. United States property interest:
 ☐ fee simple title
 ☐ easement

- ☐ in-lease
- ☐ other.

7. Is the property subject to a reversionary interest?

- ☐ No.
- ☐ Yes. If yes, describe:

8. Army interest:

- ☐ direct control
- ☐ permit from a Federal Agency
- ☐ withdrawn from the public domain.

9. Type of jurisdiction:

- ☐ Exclusive Federal Jurisdiction
- ☐ Concurrent Federal Jurisdiction
- ☐ Proprietary status

10. If other than proprietary, is jurisdiction to be retroceded?

- ☐ Yes
- ☐ No, Explain. If a retrocession action is pending, identify the status of that effort:

III. OPERATIONAL FACTORS:

1. Are utilities, e.g. electricity, natural gas/propane/heating oil, potable water, wastewater treatment, telephone, cable TV, etc., available from public utility companies?

- ☐ No
- ☐ Yes. If yes, identify the type, quantity, and provider of such services:

2. Will the Army be providing utilities or services on a reimbursable basis?

- ☐ No
- ☐ Yes. If yes, identify the instrument used to establish the terms under which such services will be provided and the type, quantity, and consideration:

3. Will the proposed use require destruction, relocation, modification, or replacement of Government facilities?

☐ No

☐ Yes; please explain:

4. Will the grant of the proposed use affect the operation of the installation or the BRAC Implementation Plan?

☐ No

☐ Yes, please explain:

5. The following site-specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the installation, e.g. security, access, parking:

6. Non-Environmental Safety Issues and Concerns, if any:

7. Airfields and Airspace.

a. Will the planned use of the property affect the airspace over or near the property or military installation?

☐ No

☐ Yes. If yes, the proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant:

b. Will the lease of the property require the notification of the FAA?

☐ No

☐ Yes. If Yes, explain who will notify FAA and when:

c. Will structures be built on the property which will require an airspace study?

☐ No

☐ Yes. If yes, explain who will do the study and any other requirements.

8. REMARKS -include any legal, policy, or mission factors you are aware of which may affect the proposed use of the property:

IV. PRELIMINARY PROCEDURES:

1. Inventory And Condition Reports (This is a personal and real property report (videotaped) by the District when we actually have a lessee):

☐ No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

☐ Government improvements are included and an inventory and condition report is required to be completed before lease.

2. Consideration:

☐ Monetary consideration is not recommended for this action. Provide full justification.

☐ USACE District is requested to determine full consideration.

☐ USACE District is requested to determine fair market value for the leased interest and for offsets (in kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased. ATTACH fair market value report/appraisal and report of offsets.

3. Waiver Of Competition:

☐ A waiver of competition is not recommended.

☐ A waiver of competition is recommended. Provide full justification and proposed lessee, if waiver is recommended.

4. Other applicable laws, regulations, MOA's, etc. requiring consideration for processing this action:

5. Additional information which will assist in processing this application/action: _____

SECTION C - REPORT OF AVAILABILITY
ENVIRONMENTAL CONSIDERATIONS

1. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS: The requirements under NEPA for the proposed leasing action have been met as follows:

[] This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 (Environmental Effects of Army Actions). The environmental effect of the action has been considered. A Record of Environmental Consideration (REC) is attached, indicating the CX pursuant to which the proposed lease is authorized. The NEPA analysis on which the REC is based is:

[] on file at HQDA (Identify title and date: _____)

[] attached (attach pertinent extracts from the applicable NEPA analysis if the REC is based on a NEPA analysis which has not been previously staffed at HQDA).

[]* The impact of this action is considered to be minimal or insignificant. The Environmental Assessment (EA) with Finding of No Significant Impact (FNSI) is:

[] on file at HQDA (Identify title and date: _____)

[] attached (if not previously staffed at HQDA).

[]* The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, along with the Record of Decision (ROD) is:

[] on file at HQDA (Identify title and date: _____)

[] attached (if not previously staffed at HQDA).

* For EA and EIS, identify mitigation actions which are required, costs, and responsible party for the mitigation:

If the EIS or EA covers more than the proposed leasing action, explain how and where the leasing action is analyzed and considered in the NEPA documentation:

2. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) AND THE ENVIRONMENTAL BASELINE SURVEY (EBS):

☐ An EBS has been conducted and no hazardous, toxic, radiological waste (HTRW) substances were identified as released, stored, or disposed on the property in the threshold quantities. Provide date of EBS on file at HQDA:

☐ An EBS has been conducted which indicates HTRW substances were released, stored, or disposed on the property in the threshold quantities. Hazardous storage, disposal, or release notification must be included in the outgrant document (reference 40 CFR Part 373) and attached to the FOSL. A copy of the EBS containing the details is on file at HQDA. Choose one:

☐ Remedial actions have been completed so that the property is considered safe for the proposed use.

☐ Remedial actions have not been completed. Estimate the time to complete such action: _____. Appropriate land use restrictions and access clauses must be provided in the protection provisions in the FOSL and put into the lease. The provisions can be found on page _____ of the attached FOSL.

3. REAL PROPERTY CONTAMINATED WITH AMMUNITION, EXPLOSIVES, OR CHEMICAL WEAPONS.

a. Does the property contain ammunition, explosives or chemical weapons?

☐ No

☐ Yes. If yes, has a Plan to clean up the property been submitted through the Major Army Command and the U.S. Army Technical Center for Explosives Safety to the Department of Defense Explosives Safety Board (DDESB) for approval before cleanup and lease?

☐ No

☐ Yes. If yes, have the ammunition, explosives, or chemical weapons been removed (to a degree compatible with the use of the property) prior to lease?

☐ Yes

☐ No. Provide date when property will be cleared:

b. Will access rights to implement any monitoring plan or use restrictions be required?

☐ No

☐ Yes. Describe (Set out proposed language to be inserted in lease):

4. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA)).

a. Choose one:

☐ The applicant will not generate hazardous waste or will not treat, dispose, or store waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity.

☐ The applicant will generate hazardous waste or will produce waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity. Identify all waste streams and quantities: _____

_____Choose the appropriate:

☐ The applicant has obtained a hazardous waste generator identification number from EPA, ID No. _____

☐ The applicant has established records, waste management requirements, and a Spill Prevention Plan.

b. Choose one re 10 USC §2692:

☐ The applicant will not store or dispose of non-DOD toxic or hazardous substances pursuant to 10 USC §2692.

☐ Storage or disposal of non-DOD toxic or hazardous substances has been authorized pursuant to 10 USC §2692 (Attach copy of authorization).

5. UNDERGROUND / ABOVE GROUND STORAGE TANKS.

☐ There are no underground storage tanks (USTs) on the property and the applicant will not be installing such tanks.

☐ There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing such tanks.

☐ There are underground storage tanks (USTs) on the property and/or the applicant will be installing such tanks:

a. Existing underground storage tanks are in compliance with current laws and regulations:

☐ Yes

☐ No, Explain:

b. Construction of proposed underground storage tanks has been certified for such compliance:

☐ Yes

☐ No, Explain:

☐ There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing such tanks:

a. Existing above ground storage tanks are in compliance with current laws and regulations:

☐ Yes

☐ No, Explain:

b. Construction of proposed above ground storage tanks have been certified for such compliance:

☐ Yes

☐ No, Explain:

6. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

☐ This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

☐ This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

☐ The applicant has applied for and received a National Pollution Discharge Elimination System (NPDES) Permit from the EPA/appropriate state agency. If not received, state circumstances: _____

☐ The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedure.

☐ Subsequent requests for expansion or additional construction should be reviewed to assure the Grantee is in compliance with the five-acre rule.

7. CLEAN AIR ACT - FEDERAL CONFORMITY REQUIREMENTS:

☐ This action does not require a written conformity determination in accordance with EPA's rule because:

☐] The installation is in an attainment area.

☐] The installation is in a non-attainment or maintenance area and the action falls within an exemption in the rule. Attach a Record of Non-applicability (RONA) in accordance with Army Guidance. List pollutants:

☐] This action is not exempt from the conformity regulation. Attach conformity determination. Describe the mitigation requirements or other restrictions, if any, which must be incorporated in the lease:

8. ENDANGERED SPECIES:

☐] Coordination with the USFWS to determine the possible presence of any federally listed endangered, threatened, or candidate species in the action area has occurred (attach correspondence). Provide date of last coordination and describe results of coordination:

☐] This leasing action will affect:

☐] a federally listed endangered or threatened species; list:

☐] a federal candidate species; list:

☐] a state listed species; list:

☐] designated critical habitat; describe:

☐] none of the preceding.

[] This leasing action may affect a federally listed endangered, threatened, or candidate species and required consultation with the USFWS has been completed. Attach any biological assessment, opinion, and correspondence with the USFWS. Accordingly, the following restrictions must be incorporated in the lease to protect the affected species and its habitat:

9. FISH AND WILDLIFE COORDINATION ACT (FWCA):

[] This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

[] This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: _____

Recommended action prior to availability:

10. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

[] CZM is not applicable.

[] CZM is applicable, and a CZM Act determination with the approved state CZM Plan has/will be obtained.11. FLOODPLAIN:

[] This property is not located within the 100-year floodplain and does not fall under the purview of Executive Order 11988.

[] This property is located within the 100-year floodplain and does fall under the purview of Executive Order 11988 and (check the appropriate):

[] The proposed use of the property will not adversely impact the flood plain.

[] There is no other practicable alternative available for this intended use.

[] The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

12. WETLANDS:

☐ Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

b. Are there improvements constructed between 1960 and 1978 which are considered to contain lead-based paint or which have been determined to contain lead-based paint?

☐ No

☐ Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

15. OTHER ENVIRONMENTAL CONSIDERATIONS:

a. Is there any Asbestos Containing Material on the property?

☐ No

☐ Yes. Provide appropriate restrictions and notifications in the FOSL and lease.

b. Will the proposed outgrant activity impact an area designated under the Wild and Scenic Rivers Act?

☐ No

☐ Yes. If yes, what conditions may need to be in c l u d e d i n t h e lease? _____

c. Will the proposed outgrant activity involve the use of insecticide, fungicide, and rodenticide so that compliance with the Federal Insecticide, Fungicide, and Rodenticide Act is necessary, e.g. Agricultural, golf courses, restaurants?

☐ No

☐ Yes. I f y e s , list: _____

d. Are there polychlorinated biphenyls (PCBs) present?

☐ No

☐ Yes

e. Has a radon survey been completed for the buildings to be leased?

☐ No

☐ Yes. Choose one:

☐ no buildings have radon in excess of applicable standards.

☐ the following buildings exceed standards: List with appropriate use restrictions:

f. Are there any other special-purpose environmental laws applicable to the proposed activity?

[] No.
[] Yes , Explain :

g. Is further environmental study required?

[] No
[] Yes , Explain :

16 . ADDITIONAL COMMENTS :

MACOM Certification

The information furnished in Sections B and C has been fully coordinated among the MACOM Staff (BRAC, environmental, legal, and real estate) and is accurate and complete. Recommend that the DASA (I&H) make a Determination of Availability by signing Section A of the ROA.

Date MACOM Certification Authority

Encl 1. (if applicable). Fair market value report/appraisal and report of offsets.

Encl 2. Finding of Suitability to Lease (FOSL) with site map attached.

Encl 3. Additional environmental reports and data (REC and extracts from applicable NEPA analysis if not already provided to HQDA; site-specific EBS, if not previously provided to HQDA; RONA) and any other documentation of compliance with environmental and cultural considerations. List Attachments: